

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**Application for Certification for the
East Altamont Energy Center
(EAEC)**

DOCKET NO. 01-AFC-4

(AFC Accepted 6/27/01)

**I. NOTICE OF EVIDENTIARY HEARINGS
And HEARING ORDER**

The Committee assigned to the aforementioned proceeding will conduct formal evidentiary hearings as follows:

**TUESDAY, October 15, 2002 and
WEDNESDAY, October 16, 2002
MONDAY, October 21, 2002**

TUESDAY, October 22, 2002 (as necessary)

**Beginning at 10:00 a.m.
Tracy Elks Lodge #2031
6400 East 11th St.
Tracy, California 95304**

[Wheelchair Accessible]

The Committee has designated Tuesday, October 22, 2002, as a CONTINUATION DATE ONLY. No scheduled hearings will be conducted on this date should those matters scheduled for hearing on October 15, 16 and 21, 2002, be fully concluded. At these hearings, the parties (Applicant, Staff, and Intervenor) will present evidence consisting of sworn testimony and exhibits on each topic area. Unless a party's written request for a change is granted, presentations will follow the agenda shown on **APPENDIX A**.

Parties at the Evidentiary Hearing will include Applicant, Staff, Western Area Power Authority (WAPA), the San Joaquin Valley Air Pollution Control District (SJVAPCD)¹, Intervenor Mr. Robert Sarvey, and the Californians for Renewable Energy, Inc. (CARE).² In addition, the Byron-Bethany Irrigation District (BBID) will present witnesses on the topic of Water Resources. (See **APPENDIX A**)

¹ SJVAPCD's presentation will be limited to the topics of Air Quality and Public Health.

² California Unions for Reliable Energy (CURE) is an Intervenor although it has been inactive in these proceedings.

II. BACKGROUND

A. Summary

On March 29, 2001, Calpine filed its Application for Certification (AFC) under the 12-month process. On June 27, 2001, the full Commission determined that Applicant had made its AFC sufficiently informative and complete to commence the review process. (Pub. Resources Code, § 25540.6).

East Altamont Energy Center (EAEC) is subject to the dual jurisdiction of the California Energy Commission and the federal WAPA, which is the lead federal agency for the project. WAPA is a federal power-marketing agency under the U.S. Department of Energy. WAPA operates and maintains about 800 miles of high-voltage transmission lines and associated facilities in Northern California, including the Tracy Substation. WAPA's mission is to market power from federal hydroelectric plants such as those at Shasta and Folsom Dams. Federal law requires WAPA to provide entities, such as merchant power plants, open access to transmission services so that they can move power to load areas. WAPA provides these services through an interconnection if there is available capacity on the transmission line. Here, WAPA's jurisdiction exists because EAEC, as proposed, will interconnect with WAPA's Tracy Substation.

Energy Commission Staff and WAPA worked together admirably to produce joint environmental analyses of the EAEC project. Their joint effort has streamlined the licensing processes of both agencies. Thus, any overlap and duplication between the state and federal processes that had the potential to further delay the project were virtually eliminated.³

However, delays not attributable to the Energy Commission or to the WAPA have precluded the AFC's timely processing under the state's one-year state statutory mandate. For example, the Joint Preliminary Staff Assessment/Preliminary Environmental Assessment, did not have the benefit of the Preliminary Determination of Compliance (PDOC) from the Bay Area Air Quality Management District (BAAQMD). BAAQMD released the PDOC on April 12, 2002, some four months after Staff released its PSA. BAAQMD issued its Final Determination of Compliance (FDOC) on July 24, 2002. Thereafter, Staff and WAPA commenced a final air quality analysis and review for inclusion in the joint Final Staff Assessment/Final Environmental Assessment, which the parties filed on September 19, 2002.

³ Joint Energy Commission Preliminary/Final Staff Analysis (PSA/FSA), and WAPA Preliminary/Final Environmental Assessment (PEA/FEA). The analyses therein were prepared in accordance with Public Resources Code sections 25500 et seq.; Cal. Code of Regs., tit. 20, §12001 et seq.; California Environmental Quality Act (Pub. Resources Code §§ 21000 et seq.) and its guidelines (Cal. Code of Regs., tit. 14 §§ 15000, et seq.), and with the National Environmental Policy Act (NEPA) (42 U.S.C. 4371, et seq.) and its implementing regulations (40 C.F.R. §§ 1500 et seq.); and the Department of Energy NEPA Implementing Procedures and Guidelines (10 C.F.R. § 1021).

The Committee will conduct formal hearings to receive evidence on all aspects of the proposed project as set forth below in **APPENDIX A**. This Notice provides a schedule for these hearings, and a notice of witnesses for each topic area.

On October 1, 2002, the parties, except for Intervenor Mr. Robert Sarvey and CARE,⁴ filed Prehearing Statements in accordance with the Committee's Notice of Prehearing Conference and Scheduling Order, dated August 21, 2002.

The parties (with the exceptions noted above) have agreed in their Prehearing Conference Statements that they are prepared to proceed to formal evidentiary hearings on all technical topic areas. Therefore, the Committee's **Hearing Order (APPENDIX A)**, which follows, schedules those hearings to be conducted as set forth above in the City of Tracy, California.

B. Formal Evidentiary Hearing Procedures

The purpose of the evidentiary hearings is to establish the factual record necessary for the Energy Commission to reach a decision on the proposed project. The record is developed by the presentation of oral and written testimony, as well as documentary evidence submitted by the parties. Evidentiary hearings are more structured than the informal workshops and Committee Conferences that have already occurred. The rules of evidence pertaining to these hearings may be found at Sections 1212-1213 of the Energy Commission's regulations,⁵ and they may be viewed on the Energy Commission's Internet website: [<http://www.energy.ca.gov/siting/title20/tofc.html>].

The parties will present evidence in the form of sworn, oral testimony, or written declarations in all technical areas as set forth in **APPENDIX A**. Any witness offering oral testimony sponsored by a party shall testify under oath or affirmation and will be subject to cross-examination by other parties. Any party sponsoring a witness shall briefly establish the witness's qualifications and have the witness orally summarize the prepared testimony before requesting that the testimony be moved into evidence.

If warranted, multiple witnesses may testify as a panel, and any relevant exhibits may be offered into evidence by the sponsoring panel member(s). At the conclusion of direct testimony, the Committee will provide all other parties an opportunity for cross-examination, followed by redirect and re-cross-examination of the witnesses, as appropriate.

⁴ On September 30, 2002, Intervenor Mr. Robert Sarvey and CARE filed, in separate motions, requests to reschedule the Prehearing Conference (now set for October 7, 2002) and extensions of time to file Prehearing Conference Statements. According to the motions, these parties did not receive certain critical documents from Staff that are required in order to file complete Prehearing Conference Statements. The Committee will address this matter with the parties at the Prehearing Conference on October 7 to determine if the EAEC evidentiary hearings schedule will be affected.

⁵ Cal. Code of Regs., tit. 20, §§ 1212, 1213; see also, § 1702 (h).

By stipulation of the parties, the Committee will accept written Declarations instead of oral testimony where the evidence is uncontroverted by the parties. The following topic areas are controverted or have the potential for controversy at the Evidentiary Hearings.

1. **AIR QUALITY**
2. **BIOLOGICAL RESOURCES**
3. **VISUAL RESOURCES**
4. **HAZARDOUS MATERIALS MANAGEMENT**
5. **LAND USE**
6. **NOISE**
7. **WORKER SAFETY & FIRE PROTECTION and**
8. **WATER RESOURCES**

Applicant has the burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facilities. [Cal. Code of Regs., tit. 20, § 1748 (e).]

C. Public Participation

Members of the public and interested governmental agencies are invited to attend these hearings and may offer unsworn public comment upon the matters discussed. These public comments will be entered into the record of the proceeding and may be used to supplement or explain the evidence of record. Public comments by themselves, however, are not sufficient to support a finding of fact or a decision on an issue.

D. Public Adviser

The Commission's Public Adviser, Roberta Mendonca, is available to provide information or to assist those interested in participating at these hearings. She may be reached at (916) 654-4489 or, toll free, at 800-822-6228; or by email at: [\[pao@energy.state.ca.us\]](mailto:pao@energy.state.ca.us).

E. Further Information

Please contact Lou Quiroz at (916) 654-5146 or email at [\[lquiroz@energy.state.ca.us\]](mailto:lquiroz@energy.state.ca.us) at least five days in advance, if you require special accommodations to participate at this hearing.

Technical questions concerning the project should be addressed to Cheri Davis the Commission's Project Manager, at (916) 657-4394 or email at [\[cdavis@energy.state.ca.us\]](mailto:cdavis@energy.state.ca.us).

Questions of a legal or procedural nature should be directed to Major Williams, Jr., the Hearing Officer, at (916) 651-2020 or email at: [\[mwilliam@energy.state.ca.us\]](mailto:mwilliam@energy.state.ca.us).

Media inquiries should be directed to Claudia Chandler, Assistant Executive Director for Media and Public Communications at (916) 654-4989 or email at: [\[energiamedia@energy.ca.gov\]](mailto:energiamedia@energy.ca.gov).

Information concerning the status of the project, as well as notices and other relevant documents, is also available on the Energy Commission's Internet home page at: **[<http://www.energy.ca.gov/sitingcases/eastaltamont/index.html>].**

Dated October 3, 2002, in Sacramento, California.

WILLIAM J. KEESE
Chairman and Presiding Member
EAEC AFC Committee

ROBERT PERNELL
Commissioner and Associate Member
EAEC AFC Committee

Mailed to Lists 7058, 7059, 7060

APPENDIX A

HEARING ORDER AND TOPIC AND WITNESS SCHEDULE

The Committee will hear topics according to the following agenda. Any requests for changes/substitutions must be made no later than the Prehearing Conference.

UNCONTESTED TOPICS⁶

Tuesday, October 15, 2002	
TOPIC	WITNESS
1. Project Description	Applicant: Alicia Torre Staff: Cheri Davis
2. Project Alternatives	Applicant: Alicia Torre and Jerry Salamy Staff: Susan V. Lee
3. Compliance Monitoring and Closure	Applicant: Steven A. De Young Staff: Lla Lewis
4. Facility Design	Applicant: James McLucas Staff: Brian Payne
5. Power Plant Reliability	Applicant: James McLucas Staff: Shahab Khosmashrab and Steve Baker
6. Power Plant Efficiency	Applicant: James McLucas Staff: Steve Baker
7. Transmission System Engineering	Applicant: Alan Roth and Amanali Amirali Staff: Ajoy Guha, Al McCuen Western: Bruce Thomas
8. Transmission Line Safety & Nuisance	Applicant: Alan Roth and Amanali Amirali Staff: Obed Odoemelum

⁶ Uncontested topics will be taken by way of sworn, written Declarations and stipulation without an opportunity for further examination by agreement of the parties.

Tuesday, October 15, 2002	
TOPIC	WITNESS
9. Cultural Resources	Applicant: James Bard Staff: Roger Mason
10. Geology and Paleontology	Applicant: David Lawler, Thomas A. Lae Staff: Robert D. "Dal" Hunter
11. Waste Management	Applicant: Steven De Young Staff: Obed Odoemelam
12. Traffic & Transportation	Applicant: Jeanie Acutanza and Jerry Salamy Staff: David Flores
13. Socioeconomics	Applicant: Fatuma Yusuf Staff: James Adams
14. Public Health	Applicant: John Lowe and Stephen O'Kane Staff: Obed Odoemelam Intervenor San Joaquin Valley Unified Air Pollution Control District: Seyed Sadredin; Jim Swaney CARE: James Whitehorn (EmeryChem)

CONTESTED TOPICS⁷

October 15, 16, 21, 22, 2002

TOPIC	WITNESS
1. Worker Safety & Fire Protection (approximately 1 p.m. on October 15)	Applicant: Tricia Danby and James McLucas Alameda County Fire Chief, Bill McCammon Staff: Alvin J. Greenberg and Rick Tyler Robert Sarvey⁸
2. Noise	Applicant: Robert Greene, James McLucas, Mark Bastasch, and Steven De Young Staff: Jim Buntin and Steve Baker
3. Land Use	Applicant: Alicia Torre and Steven De Young Staff: Negar Vahidi and Eileen Allen Intervenor Robert Sarvey: Dick Schneider, Eric Parfrey
4. Hazardous Materials Management	Applicant: Jerry Salamy Staff: Alvin Greenberg and Rick Tyler Intervenor Robert Sarvey: Terrel Estes

⁷ Contested topics will be continued to October 16 and 21 and to the backup day, October 22, 2002, where necessary. The Committee will discuss the specific order of topics with the parties on October 7 at the Prehearing Conference.

⁸ Where no witness is listed by the party's name, the party has reserved only the right to cross-examine other party's witnesses unless the parties timely amend their Prehearing Conference Statements/Prefiled Testimony to list a witness.

October 15, 16, 21, 22, 2002	
TOPIC	WITNESS
5. Soil & Water Resources	<p>Applicant: Steve Long, Kris Helm, James McLucas, Kevin O'Brien</p> <p>Byron Bethany Irrigation District: General Manager Richard L. Gilmore, Gary Nuss, Andrew M. Hitchings</p> <p>Staff: Lorraine White, John Scroggs, Jim Henneforth and John Kessler</p> <p>Intervenor Robert Sarvey: Eric Parfrey</p>
6. Air Quality	<p>Applicant: Gary Rubenstein, Thomas Andrews, Jeffrey Adkins</p> <p>Staff: Tuan Ngo</p> <p>(Bay Area Air Quality Management District: Ellen Garvey, Air Pollution Control Officer Dennis Jang, Air Quality Engineer)</p> <p>Intervenor San Joaquin Valley Unified Air Pollution Control District: Seyed Sadredin; Jim Swaney</p> <p>CARE: James Whitehorn (EmeryChem)</p>
7. Biological Resources	<p>Applicant: E. J. Koford</p> <p>Staff: Andrea Erichsen</p> <p>CARE and Intervenor Robert Sarvey: Shawn Smallwood</p>
8. Visual Resources (Plume Analysis)	<p>Applicant: Tom Priestley</p> <p>Staff: Michael Clayton</p>